

UNITED STATES COURT OF APPEALS SEP 24 2001

TENTH CIRCUIT

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,
vs.

JEREMY ALAN CURTIS, also known
as Jeremy Alan Curtis,

Defendant - Appellant.

No. 01-1062
(D.C. No. 00-S-2287)
(D. Colo.)

ORDER AND JUDGMENT*

Before **EBEL, KELLY, and LUCERO**, Circuit Judges.**

Petitioner Jeremy Alen Curtis, an inmate appearing pro se, seeks a certificate of appealability (“COA”) allowing him to appeal the district court’s order denying relief on his motion pursuant to 28 U.S.C. § 2255 and a motion allowing him to proceed on appeal in forma pauperis (“IFP”). We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253(a). Because Mr. Curtis has

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

failed to make a “substantial showing of the denial of a constitutional right” as required by 28 U.S.C. § 2253(c)(2), we deny his request for both the COA and the IFP and dismiss the appeal for substantially the same reasons given by the district court. Doc. 42. Appendi v. New Jersey, 530 U.S. 466 (2000) does not require that the fact of a prior conviction appear in an indictment. United States v. Dorris, 236 F.3d 582 (10th Cir. 2000).

We DENY Mr. Curtis’s request for a COA and IFP and DISMISS this appeal.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge